

109TH CONGRESS
2D SESSION

H. R. 4861

To authorize the Federal Communications Commission to impose licensing conditions on digital audio radio to protect against the unauthorized distribution of transmitted content.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2006

Mr. FERGUSON (for himself, Mr. TOWNS, Mrs. BONO, Mr. GORDON, and Mrs. BLACKBURN) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To authorize the Federal Communications Commission to impose licensing conditions on digital audio radio to protect against the unauthorized distribution of transmitted content.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Audio Broadcast Flag
5 Licensing Act of 2006”.

1 **SEC. 2. LICENSING OF DEVICES FOR OVER-THE-AIR AND**
2 **SATELLITE DIGITAL AUDIO BROADCASTING.**

3 Part I of title III of the Communications Act of 1934
4 (47 U.S.C. 301 et seq.) is amended by adding at the end
5 the following new section:

6 **“SEC. 342. GRANT OF LIMITED AUTHORITY REGARDING**
7 **THE LICENSING OF DEVICES FOR OVER-THE-**
8 **AIR AND SATELLITE DIGITAL AUDIO BROAD-**
9 **CASTING.**

10 “(a) GRANT OF AUTHORITY.—The Commission has
11 authority—

12 “(1) to require and enforce, subject to sub-
13 sections (b) and (c), in conjunction with the in-band,
14 on-channel technical standard for digital audio
15 broadcast transmissions under consideration in MM
16 Docket No. 99–235, or any successor regulations,
17 that—

18 “(A) all technologies necessary to make
19 transmission and reception devices compliant
20 with such technical standard are licensed on
21 reasonable and nondiscriminatory terms;

22 “(B) such licenses shall include prohibi-
23 tions against unauthorized copying and redis-
24 tribution of transmitted content through the
25 use of a broadcast flag or similar technology, in

1 a manner generally consistent with the purposes
2 of other applicable law; and

3 “(C) licensees of the Commission providing
4 digital audio broadcast service shall give effect
5 to and comply with such prohibitions; and

6 “(2) to require and enforce, subject to sub-
7 sections (b) and (c), as part of its regulation of sat-
8 ellite digital audio radio services (SDARS) pursuant
9 to part 25 of the Commission rules, or any successor
10 regulations, that—

11 “(A) all technologies necessary to make
12 transmission and reception devices capable of
13 receiving satellite digital audio radio trans-
14 missions are licensed on reasonable and non-
15 discriminatory terms;

16 “(B) such licenses shall include prohibi-
17 tions against unauthorized copying and redis-
18 tribution of transmitted content through the
19 use of a broadcast flag or similar technology, in
20 a manner generally consistent with the purposes
21 of other applicable law; and

22 “(C) licensees of the Commission providing
23 satellite digital audio radio services shall give
24 effect to and comply with such prohibitions.

1 “(b) DISCLOSURE.—Any rules and regulations pro-
2 mulgated pursuant to subsection (a) that apply to the use
3 of transmissions, or content therein, shall require the full
4 disclosure of any information required to enable the manu-
5 facture of compliant devices.

6 “(c) LIMITATIONS ON REGULATIONS.—The adoption
7 of any digital audio regulations pursuant to this section—

8 “(1) shall not delay the adoption of final oper-
9 ational rules for digital audio broadcasting;

10 “(2) shall not make obsolete any devices already
11 manufactured and distributed in the marketplace be-
12 fore the implementation of such regulations; and

13 “(3) shall not be inconsistent with the cus-
14 tomary use of broadcast content by consumers to the
15 extent such use is consistent with the purposes of
16 this act and other applicable law.

17 “(d) REVISIONS PERMITTED.—The Commission may
18 reconsider, amend, repeal, supplement, and otherwise
19 modify, in whole or in part, any regulations adopted pur-
20 suant to subsection (a) in order to further the purposes
21 of this section, except that any change in such regulations
22 shall employ a broadcast flag or similar technology as the
23 means to achieve those purposes.

24 “(e) ACTIVITIES OF PERFORMING RIGHTS AND ME-
25 CHANICAL RIGHTS ORGANIZATIONS.—Nothing shall pre-

1 clude or prevent a performing rights organization or a me-
2 chanical rights organization, or any entity owned in whole
3 or in part by, or acting on behalf of, such organizations,
4 from monitoring public performances or other uses of
5 copyrighted works contained in such transmissions. The
6 Commission may require that any such organization or en-
7 tity be given a license on either a gratuitous basis or for
8 a de minimus fee to cover only the reasonable costs to
9 the licensor of providing the license, and on reasonable,
10 non-discriminatory terms, to access and retransmit as nec-
11 essary any content contained in such transmissions pro-
12 tected by content protection or similar technologies, pro-
13 vided that such licenses are for purposes of carrying out
14 the activities of such organizations or entities in moni-
15 toring the public performance or other uses of copyrighted
16 works and that such organizations or entities employ rea-
17 sonable methods to protect any such content accessed
18 from further distribution.”.

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